ST 06-4
Tax Type: Sales Tax
Issue: Books And Records Insufficient
Audit Methodologies and/or Other Computational Issues

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**No. 04-ST-0000** **IBT# 0000-0000** **NTL# 00 0000000000000** **00 0000000000000** **00 0000000000000**
v.	
ABC, INC., **Taxpayer**	**Ted Sherrod** **Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: George Foster, Special Assitant Attorney General, for the Illinois Department of Revenue; Michael C. Whelan and Thomas Ryder of the Law Offices of Michael C. Whelan for ABC, Inc.

Synopsis:

This matter concerns a timely protest by ABC, Inc. ("ABC" or "taxpayer") to three Notices of Tax Liability ("NTLs") issued against it by the Illinois Department of Revenue ("Department"). NTL number 00 0000000000000 assessed Retailers' Occupation Tax ("ROT") regarding the period January 2000 through November 2000, NTL number 00 0000000000000 assessed ROT regarding the period December 2000 through June 2002, and NTL number 00 0000000000000 assessed ROT regarding the

period July 2002 through and including December 2002. A hearing on the taxpayer's protest was held at the Department's Chicago offices on September 29, 2005. At the hearing, the taxpayer introduced evidence consisting of schedules and other documents prepared by the Department, and a schedule prepared by the taxpayer. After reviewing the evidence presented at the hearing, I recommend that the NTLs at issue be modified to allow a deduction for Cook County Motor Fuel Tax on gasoline sales determined by the Department to be attributable to the taxpayer's Harvey, Illinois location and, as modified, be finalized.

Findings of Fact:

1. Pursuant to its grant of authority by statute, 35 **ILCS** 120/4, the Department issued to the taxpayer Notice of Tax Liability ("NTL") number 00 0000000000000, NTL number 00 0000000000000 and NTL number 00 0000000000000 on October 4, 2004. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of these Notices of Tax Liability ("NTLs") showing tax liability in the aggregate amount of $155,465.10 for the period covered by the NTLs, January 1, 2000 through December 31, 2002.[1] Department Exhibit ("Ex.") 1.

2. ABC, Inc. ("ABC"), a subchapter S corporation and sole proprietorship (John Doe is the owner) is engaged in the retail sale of gasoline and other products at four gas stations located in Chicago, Naperville, Harvey and Normal, Illinois. *Id*. The taxpayer derives 80% of its total revenue from the sale of gasoline. Tr. pp. 86, 87.

[1] Unless otherwise noted, findings of fact apply to the tax period in controversy.

While the taxpayer is primarily engaged in the business of selling gasoline, it also sells lottery tickets and soft drinks at one or more of its service station locations. Tr. pp. 56-58, 63; Taxpayer Ex. 9. ABC is required to file, and files sales tax returns on a monthly basis. Taxpayer Ex. 6.

3. During 2003, ABC was the subject of an audit conducted by Illinois Department of Revenue auditor Laurie Gleason (hereinafter "auditor" or "Ms. Gleason"). Tr. p. 10; Department Ex. 1 (Auditor's Comments). During the audit, Ms. Gleason requested the taxpayer's books and records, including monthly sales tax returns, sales and purchase invoices, cancelled checks, financial statements, federal and state income tax returns, bank statements, purchase and sales journals, disbursement journals/ check registers, and the company's chart of accounts and general ledger. Dept. Ex. 2. Records provided by the taxpayer in response to this request were incomplete. Tr. pp. 45-48.

4. Taxpayer did not provide the auditor with a complete set of accounting records, financial statements, journals or ledgers. Tr. pp. 45, 46. Specifically, no federal and state corporate tax returns, general ledgers, purchase and sales journals, disbursement journals, check registers or sales invoices were provided. Tr. pp. 47, 48; Dept. Ex. 2. Nor did the taxpayer provide all of its sales and use tax returns, bank statements or purchase orders. *Id.* After reviewing the partial records supplied by the taxpayer in response to the Department's demand for records, the auditor determined that the records provided were not adequate to verify sales reported by the taxpayer on its sales tax returns. Tr. p. 49.

5. Because the invoices and other records provided by the taxpayer were incomplete, Ms. Gleason attempted to verify the taxpayer's purchases by mailing forms called EDA-20s requesting sales information regarding sales to the taxpayer during 2000, 2001 and 2002 to the taxpayer's suppliers during those years. Tr. pp. 12, 13, 30-32, 44, 45; Taxpayer Ex. 7. These forms requested disclosure of their sales to the taxpayer, constituting the taxpayer's purchases, during the 2000 through 2002 period. Tr. pp. 44, 45. Ms. Gleason used this information, along with available cancelled checks provided by the taxpayer, to determine what the taxpayer's purchases were during this period. Tr. pp. 12, 49, 50.

6. The auditor calculated the projected sales amount by multiplying the amount of total purchases indicated by cancelled checks provided by the taxpayer and reported on EDA-20s from taxpayer's suppliers for 2001 and applying a mark-up to this amount. Tr. pp. 12, 13, 49, 50, 54. Since the taxpayer provided the auditor with no documentary information regarding the mark-up on its sales (Tr. pp. 45, 46; Department Ex. 1 (Auditor's Comments)), the auditor used the average mark-up on purchases by retail gasoline stations comparable in size to the taxpayer (Taxpayer Ex. 3, 4) to arrive at the taxpayer's sales prices for 2000, 2001 and 2002. Tr. pp. 17-20, 50, 51. The auditor obtained this mark-up information from the Risk Management Association Annual Statement for 2002 and 2003 (Tr. pp. 20, 50; Taxpayer Ex. 3, 4), which is generally used by the Department to determine sales mark-ups for cash businesses, such as the taxpayer, having incomplete books and records. Tr. p. 50.

7. The auditor arrived at an "error percentage" or percentage by which the taxpayer underreported gross revenues on its returns as filed, for 2001, by dividing gross

receipts reported on the taxpayer's sales tax returns by total gross receipts determined by the auditor as indicated above. Tr. pp. 49-54; Taxpayer Ex. 2, 9. To arrive at taxable gross revenue, this error percentage was applied only to the taxable portion of the taxpayer's gross receipts as reported by the taxpayer on its returns filed in 2000, 2001 and 2002 which was 59.814% of total sales. Tr. pp. 52, 53. The error percentage determined for 2001[2] was also projected to 2000 and 2002 to arrive at taxable gross receipts for these years. Tr. pp. 38, 53, 54. This error percentage was determined to be 18.526 %. Tr. p. 51. Gross receipts for 2000, 2001 and 2002 were determined by applying this error percentage to gross receipts reported by the taxpayer on its sales tax returns to determine the taxpayer's corrected gross sales tax base. Tr. pp. 49-55; Taxpayer Ex. 2. The resulting sales determined in this manner were multiplied by a tax rate of 8.75% for the taxpayer's location in Chicago, 7.75% for its Harvey location, 7.25% for its Normal location and 6.75% for its Naperville location to determine the amount of tax due for the period January 1 through June 30, 2000, 2001 and 2002.[3] Taxpayer Ex. 2, 9.

8. The auditor compared her estimate of ABC's total gross receipts to the receipts as reported on line 1 of the taxpayer's monthly ROT returns for the audit period, and treated the difference as unreported gross receipts. *Id.* The NTLs assessed tax

[2] The auditor testified that she used 2001 as her "test" period because records and other information for that year were more complete than those available for 2000 or 2002. Tr. p. 54; Department Ex. 1 (Auditor's Comments).

[3] In arriving at the taxpayer's tax liability, for July 2000 through December 2000, the auditor applied a reduced tax rate to the taxpayer pursuant to 35 **ILCS** 120/2-10 which provides in part as follows: "Beginning on July 1, 2000 and through December 31, 2000, with respect to motor fuel, as defined in Section 1.1 of the Motor Fuel Tax Law, and gasohol, as defined in Section 3-40 of the Use Tax Act, the tax is imposed at the rate of 1.25%."

measured by additional tax due on these unreported gross receipts. Tr. p. 55; Department Ex. 1 (Auditor's Comments).

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9. The NTLs also assessed tax that was measured by the amount of deductions attributable to transactions the taxpayer claims were not subject to Retailers' Occupation Tax on the taxpayer's returns, but for which the auditor could find no documentary support. Dept. Ex. 1 (Auditor's Comments); Taxpayer Ex. 9.

10. For the audit period, the auditor prepared a schedule to identify the amount and types of deductions to which she determined the taxpayer was entitled. Tr. pp. 55-57; Taxpayer Ex. 9. This schedule allowed deductions for sales tax collected (Tr. p. 57), lottery receipts (Tr. p. 58), state motor fuel taxes, gasohol receipts (Tr. p. 61) and soft drink taxes (Chicago) (Tr. p. 63; Taxpayer Ex. 9).

11. For the audit period, the auditor determined that the taxpayer should not be allowed any deduction for newspaper receipts (Tr. p. 57) and "other" non-taxable receipts that were not itemized, and that the taxpayer's deductions for Illinois motor fuel tax and local motor fuel tax should be substantially reduced. Tr. pp. 58-63; Taxpayer Ex. 9.

12. For the test period (2001), the auditor determined that the taxpayer's prepaid motor fuel tax returns filed with the Department by gasoline suppliers of the taxpayer (Tr. p. 59) showed gasoline purchases (measured by gallons) on which motor fuel tax was prepaid in an amount less than the number of gallons reported as sold and reflected on the taxpayer's deductions for state and local motor fuel taxes on its Illinois sales tax returns. Tr. pp. 58-63. Accordingly, she reduced the amount of the state motor fuel tax deduction for 2001 from $385,817 to $338,150 (Tr. p. 59; Taxpayer Ex. 9), and

reduced the amount of the local motor fuel tax deduction from $194,174 to $31,872. Tr. p. 61; Taxpayer Ex. 9. The percentage reduction determined for 2001 was projected to 2000 and 2002 to reduce the state and local motor fuel tax deductions taken by a the taxpayer in a comparable manner for those years. Department Ex. 1 (Auditor's Comments).

13. The auditor treated the amounts of disallowed deductions as taxable gross receipts, and the NTLs assessed tax measured in part by the amount of disallowed deductions. Department Ex. 1 (Auditor's Comments).

14. Taxpayer introduced no books or records at hearing to substantiate its claim that its mark-up on lower grades of gasoline was substantially lower than the mark-up used by the Department (Tr. pp. 86, 87), or to show its selling prices for different grades of gasoline during the audit period, and produced no documentary evidence to substantiate a different mark-up on gasoline sales from that arrived at by the Department.

Conclusions of Law:

Upon examination of the record in this case, I find that, with the exception of the taxpayer's claim that the disallowance of deductions for Cook County Motor Fuel Taxes, as indicated below, was improper, the taxpayer has not presented sufficient competent evidence to overcome the Department's *prima facie* case. Accordingly, for the reasons given below, the aforementioned Notices of Tax Liability should be modified to allow such Cook County Motor Fuel Tax deductions and, as so modified, be affirmed in their entirety.

The Department introduced its Notices of Tax Liability into evidence under the certificate of the Director. Dept. Ex. 1. This established *prima facie* proof of the correctness of the amount of tax due. 35 **ILCS** 120/4. The Department's *prima facie* case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 156 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276, 278, 279 (1943). A taxpayer cannot overcome this presumption merely by denying the accuracy of the Department's proposed assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833 (1st Dist. 1988). Instead, a taxpayer must present evidence that is consistent, probable and identified with its books and records to show that the proposed assessment is not correct. *Id.* at 833, 834.

In Illinois, retailers are required under the Retailers' Occupation Tax Act ("ROTA"), 35 **ILCS** 120/1 *et seq.,* to maintain adequate books and records as follows:

> Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. 35 **ILCS** 120/7

Further, the Department's regulations outline what minimum records a retailer must keep under the ROTA: 1) cash register tapes and other data to keep a record of gross daily sales; 2) vendors' invoices and copies of purchase orders maintained serially; and 3) yearly inventory records. 86 Ill. Admin. Code, ch. I, sec. 130.805. If a taxpayer fails to maintain adequate records, and does not supply the Department with documentation to substantiate its gross receipts, the Department is justified in using other reasonable methods to estimate the taxpayer's revenues. Masini v. Department of Revenue, 60 Ill.

App. 3d 11 (1st Dist. 1978); Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991).

In the present case, taxpayer did not present the auditor with complete books and records as required by law, since it could not produce critical sales and purchase records needed to document the taxpayer's daily sales. Tr. pp. 45-49; Department Ex. 1 (Auditor's Comments). As a result, the auditor was compelled to obtain the amount of the taxpayer's purchases from its suppliers by mailing out EDA-20 forms. Tr. pp. 12, 13, 30-32, 44, 45; Taxpayer Ex. 7. To arrive at a tax liability, the Department's auditor applied a mark-up to the purchases ascertained in this manner as well as by reviewing the taxpayer's cancelled checks, to determine gross sales of gasoline and other inventory during the period in controversy. Tr. pp. 12, 13, 49, 50, 54.

Taxpayer has contested various aspects of the auditor's audit methodology. The Illinois courts have held that, to survive attack, the Department's audit methodology must only meet a minimum standard of reasonableness. Masini, *supra* at 14. After the Department presented its *prima facie* case, the burden shifted to the taxpayer to present evidence sufficient to overcome the presumed correctness of the Department's determination. Fillichio, *supra* at 333. Taxpayer's counsel attempted to meet this burden by presenting documentary evidence taxpayer claims demonstrates that the auditor incorrectly calculated the taxpayer's gross receipts when using a "percentage mark-up" method to calculate the taxpayer's tax liability. Tr. pp. 83-85; Taxpayer Ex. 2, 3. The taxpayer contends that a correct determination using this method requires that a reasonable mark-up reflecting gross profit be applied to gross purchases to arrive at a correct determination of the taxpayer's sales (to which an appropriate tax rate must be

applied in arriving at the taxpayer's tax liability). *Id.* In lieu of doing this, the taxpayer argues, the auditor arbitrarily applied a mark-up to the taxpayer's gross sales as reported on the taxpayer's tax returns. *Id.* Accordingly, the impropriety alleged is that the Department applied a mark-up to taxpayer's sales as reported which, the taxpayer contends, already included a mark-up to reflect the taxpayer's gross profit. Department Ex. 1 (Auditor's Comments). However, the record clearly shows that the auditor did not compute the taxpayer's gross receipts in this manner. Had she done so, for the test year 2001, the taxpayer's base for 2001 shown on taxpayer's Ex. 2, before reduction to reflect non-taxable sales shown on this exhibit would have been $623,118.03 rather than $617,320, the amount the auditor computed.

The record shows that the taxpayer's annual gross receipts for the test period 2001 exceeded $3,000,000. See Taxpayer Ex. 2, 6. The record also shows that the taxpayer was properly classified as a "gasoline service station" business for purposes of applying comparative data prepared by the Risk Management Association indicating average mark-ups in various types of businesses. Tr. pp. 19, 20; Taxpayer Ex. 4. The mark-up based upon such comparative data, shown for "gasoline service station" businesses comparable in revenues to the taxpayer is 18.7 percent. Taxpayer Ex. 3. Applying an 18.7 percent mark-up to the taxpayer's 2001 revenues as reported yields a "Base" amount as shown on taxpayer's Ex. 2 of $623,118.03. However, the auditor determined that the taxpayer's base amount for 2001 was $617,320. Taxpayer Ex. 2. This discrepancy in results is clear evidence that the auditor did not arrive at a liability by simply applying a mark-up to taxpayer's gross receipts as reported, as the taxpayer contends.

Moreover, the taxpayer's claim ignores the auditor's unrebutted testimony that she applied a mark-up to the taxpayer's purchases, rather than to the taxpayer's sales to arrive at the liability indicated in the NTLs at issue because she was unable to verify the sales figures the taxpayer reported. Tr. pp. 45-49; Department Ex. 1 (Auditor's Comments). This testimony is supported by documentary evidence contained in the record showing that the auditor surveyed or "circularized" the taxpayer's vendors to determine sales made to the taxpayer, constituting taxpayer's purchases, during the tax period at issue. Taxpayer Ex. 7. The auditor testified that, after reviewing responses to these surveys and cancelled checks representing payments for inventory, the auditor arrived at an approximation of the taxpayer's actual purchases during this period. Tr. pp. 12, 13, 49, 50, 54. She further testified that since the taxpayer provided no information showing its mark-up on purchases representing the taxpayer's gross profit on its sales, the auditor used a typical mark-up for a business comparable in total revenues to the taxpayer as reported by Risk Management Association. Tr. pp. 17-20. The taxpayer presented no documentary evidence to refute any of this testimony.

To believe the taxpayer's claim that the auditor improperly utilized the taxpayer's reported sales in arriving at a liability, one must disbelieve the auditor's testimony that the taxpayer's books and records were insufficient to verify amounts shown on the taxpayer's returns. However, the taxpayer's failure to present any books and records at the evidentiary hearing tends to corroborate, rather than refute the auditor's claim.

Since the record clearly shows that the taxpayer's gross receipts were not calculated by the auditor by applying a mark-up to the taxpayer's sales, as the taxpayer

contends, I find the taxpayer's contention that the auditor used a flawed, arbitrary and capricious audit method to determine the taxpayer's sales to be without merit.

Moreover, case law in Illinois clearly indicates that merely denying the accuracy of the Department's assessments, offering alternative hypotheses or arguing that its audit methodology is flawed is not enough to overcome the Department's *prima facie* case. A.R. Barnes & Co., *supra*; Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Pursuant to 35 **ILCS** 120/4, the Department's Notices of Tax Liability submitted as Department Ex. 1 is *prima facie* correct and constitutes *prima facie* evidence of the correctness of the amount of tax due as shown thereon. See A.R. Barnes & Co., *supra*. Once the Department establishes the *prima facie* correctness of the amount of tax due through the admission into evidence of these NTLs, the burden shifts to the taxpayer to show that such determination is incorrect. *Id.* In order to overcome the presumption of validity attached to the Department's determination of tax liability, the taxpayer must do more than merely deny the accuracy of the Department's findings. *Id.* Rather, the taxpayer must produce competent evidence, identified with its books and records showing that the Department's determinations are incorrect. Copilevitz, *supra*.

In this case, the taxpayer has presented no documentary evidence to prove that the auditor's determination of the amount of purchases or the mark-up she used was arbitrary, capricious or unreasonable. The only documentary proof presented was a copy of one of the Department's schedules which, as noted above, the taxpayer incorrectly construed to represent the application of a mark-up to sales reported on the taxpayer's returns. Absent corroborating documentary evidence, support for the taxpayer's claim consists of no more than unsupported assertions by the taxpayer's counsel that the

Department's methodology was unfair and unreasonable. Argument and testimony by the taxpayer that cannot be substantiated by documentary evidence closely associated with the taxpayer's books and records is insufficient to overcome the *prima facie* correctness of the Department's Notices of Tax Liability. Copelivitz, *supra*.

The taxpayer also argues that the Department failed to take into account deductions from gross receipts taken by the taxpayer on returns its filed for the tax period in controversy. On audit, the auditor determined that the taxpayer presented insufficient documentation to support its deductions for newspaper sales and non-taxable receipts that were not itemized. Tr. p. 57, 58; Taxpayer Ex. 9. She also determined that the taxpayer's deductions for motor fuel taxes collected on sales of gasoline were overstated based upon prepaid sales tax returns filed by the taxpayer's suppliers reporting gasoline purchases on which the taxpayer prepaid sales tax. Tr. pp. 58-63; Taxpayer Ex. 9.

While the taxpayer presented no documentation from its books and records, it claims that the auditor's disallowance of the motor fuel tax deduction taken for local motor fuel taxes is not supported by the auditor's schedule of deductions. Tr. pp. 40, 41; Taxpayer Ex. 9, 11. It argues that the auditor's schedule (Taxpayer Ex. 9) plainly shows that the auditor disallowed any deduction for Cook County Motor Fuel Taxes attributable to sales at the taxpayer's Harvey, Illinois location in Cook County, which it contends was improper. *Id*.

Most county motor fuel taxes authorized by statute are not deductible in computing Illinois sales tax. See 86 Ill. Admin. Code, ch. I, section 130.435(c). This would include all such taxes imposed by DuPage, Kane and McHenry counties pursuant to the County Motor Fuel Tax Law at 55 **ILCS** 5/5-1035.1. However, 86 Ill. Admin.

Code, ch. I, section 130.2060 provides for an exception to this general rule, stating in part as follows:

> … (b) … Persons engaged in the business of selling motor fuel to purchasers for use or consumption are also required to remit Retailers' Occupation Tax to the Department upon their taxable receipts from such sales. In computing their Retailers' Occupation Tax liability, persons who sell motor fuel for use or consumption may deduct, from their gross receipts from such sales, the Illinois Motor Fuel Tax collected with respect to such sales, because the Illinois Motor Fuel Tax is on the consumer and is not considered to be part of the "selling price" of motor fuel. …
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> (c) In addition, the Cook County Motor Fuel Tax is imposed upon the consumer and is therefore also deductible from gross receipts. However, County Motor Fuel Taxes imposed under the County Motor Fuel Tax Law are includable in gross receipts subject to Retailers' Occupation Tax because such taxes are imposed upon retailers of motor fuel and not upon consumers.
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> 86 Ill. Admin. Code, ch. I, section 130.2060(b), (c)

This regulation expressly allows a deduction for Cook County Motor Fuel Taxes because the incidence of this tax is upon the consumer rather than the retailer. Since the taxpayer was authorized to pass the Cook County Motor Fuel Tax on to its consumers, the auditor's failure to allow any deduction for Cook County Motor Fuel Taxes collected by the taxpayer on sales of gasoline at its Harvey, Illinois location was improper. However, this deduction is allowable only to the extent it is corroborated by sales of motor fuel at the taxpayer's Harvey location reflected in the auditor's schedule of deductions included in the record. See Taxpayer Ex. 9.

With the exception of the auditor's schedule of deductions, which, as noted above, are relied upon by the taxpayer to show that the Department's disallowance of a deduction for Cook County Motor Fuel Taxes attributable to sales at the taxpayer's Harvey, Illinois location was incorrect, the taxpayer did not introduce any documentary evidence to substantiate the deductions taken on its returns. Section 7 of the ROTA, 35

ILCS 120/7 expressly enumerates the type of documentation that must be maintained to support deductions taken for exempt or non-taxable transactions, providing in part at follows:

> To support deductions made on the tax return form, or authorized under this Act, on account of receipts … from any … kind of transaction that is not taxable under this Act, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each such transaction, the character of every such transaction, the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the non-taxable character of such transaction under this Act … It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable.
> 35 **ILCS** 120/7

Since the taxpayer failed to present any documentation tied to any transactions during the audit period of the kind enumerated in 35 **ILCS** 120/7 and required by this statute to support the deductions taken by the taxpayer that were disallowed, with the exception of the disallowance of any deduction for Cook County Motor Fuel Taxes attributable to the taxpayer's Harvey location, the auditor properly denied deductions taken by the taxpayer in arriving at the taxpayer's tax liability as reflected in the Notices of Tax Liability at issue in this case. The taxpayer's undocumented assertion that it is entitled to deductions taken on its returns is not sufficient to rebut the Department's *prima facie* case in the absence of the taxpayer's production of records which it is required by law to produce. Copilevitz, *supra*; A.R. Barnes & Co., *supra*; Central Furniture Mart, *supra*.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notices of Tax Liability at issue in this case be adjusted to allow a

deduction for Cook County Motor Fuel Tax on gasoline sales determined by the auditor to be attributable to the taxpayer's Harvey, Illinois location and, as modified, be finalized.

Ted Sherrod
Administrative Law Judge

Date: February 21, 2006